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# THE CURRENT STATUS OF THE UNEMPLOYMENT COMPENSATION PROGRAM

BY SAMUEL BERNSTEIN

Commissioner, Division of Unemployment

Compensation, Illinois Department of Labor

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THE CURRENT STATUS OF THE UNEMPLOYMENT COMPENSATION PROGRAM

by

Samuel Bernstein

(Address at the Eighth Annual Central Labor Union Conference, sponsored by the Illinois State Federation of Labor and conducted by the University of Illinois Institute of Labor and Industrial Relations and Division of University Extension, January 4, 1957, at Illini Union, University of Illinois, Urbana, Illinois.)

The Federal Social Security Act became law 21 years ago. One of its provisions--for a 3 per cent payroll tax on employers, against which an employer was given credit for paying contributions under a State unemployment compensation law--induced all the States to enact such unemployment compensation laws (except Wisconsin, which already had one). Illinois began to pay benefits under its new unemployment compensation law in July, 1939.

In the intervening 17 years, we went through the last years of the Great Depression, two wars, and a couple of recessions. Our economy underwent a radical transformation. We reached undreamed of peaks in national income, productivity, prices and wages, and we broke records in the number of people employed. We have become accustomed to the idea of ever higher levels of prosperity and to steadily rising living standards.

However, even in periods of the greatest prosperity, economic dislocations continue to exist. Shortages of materials, seasonal factors, business mortality, technological changes, shifts in the demand for goods and services, occasional readjustments which we identify as recessions, and a host of other factors all contribute to the continuing existence of some unemployment throughout the economy, unevenly distributed in time and space, so that at some time or in some geographical area the volume of unemployment approaches seriously high levels. We cannot forget that every



person for whom wages are his source of livelihood is subject, throughout his productive years, to the risk of being out of a job and of losing his source of livelihood.

Unemployment compensation is designed to insure workers against that risk and partially to alleviate the consequences of unemployment by replacing part of the wages lost by the worker during a period of unemployment. Today we are going to ask ourselves, "Is it doing this job effectively? What has happened to the program in Illinois since benefit payments first began 17 years ago? Has it kept pace with the changes in our economy since 1939? Does a worker in 1956 have as good an insurance policy against unemployment caused by economic conditions as he did in 1939?"

The effectiveness of an unemployment compensation program is judged by the extent of its coverage, the adequacy of the benefits paid, and the degree of stringency of its eligibility requirements and disqualification provisions. Let's analyze these, one by one.

#### Coverage

The 3 per cent Federal payroll tax which I have mentioned was imposed on employers of eight or more workers in the United States. In addition to exempting the payrolls of smaller establishments from the tax, the Federal law exempted the earnings of agricultural workers, domestic servants, Federal, State, and local government employees, workers in certain types of not-for-profit institutions, and those in a number of miscellaneous occupations. In general, the new State unemployment compensation laws, including the Illinois law, exempted the same groups from the payment of contributions, and left these workers outside the protection of unemployment insurance. Over the years, these exclusions continued, except in relation to small establishments. While the Federal tax, until



1956, continued to be limited to employers of eight or more workers, more than half the States amended their laws to cover establishments employing fewer than that number. Thus, beginning with 1940, the coverage of the Illinois Unemployment Compensation Act was extended to employers of six or more workers.

In 1954, two important changes were made in the Federal law. The first provided for unemployment compensation coverage for virtually all Federal civilian employees. The second extended the Federal payroll tax to employers of four or more workers, beginning with 1956. Because of the tax forgiveness provisions I have already mentioned, all the States which did not already cover the newly taxed employers, including Illinois, hastened to amend their unemployment compensation laws to do so. Thus, beginning with 1956, some 85,000 Illinois workers in establishments employing four and five persons came under the protection of unemployment insurance for the first time. Meanwhile, as of now, three States cover firms with three or more workers, two States cover firms with two or more workers, and 18 States cover firms with one or more workers.

The prospects of further extension of coverage of the Illinois Unemployment Compensation Act in the near future do not appear to me to be very bright. The considerations which prevented such coverage extension between 1940 and 1956 still prevail. I am inclined to the opinion that further extension of coverage in Illinois will more likely be brought about by additional changes in the Federal law, rather than by direct amendments of the Illinois Act.

#### The Weekly Benefit Amount

When we think about the problem of the adequacy of the benefits paid to unemployed workers, we are no longer required to look at Federal



law. The size of the weekly benefit and, for that matter, the unemployment compensation eligibility requirements and disqualification provisions, are areas over which the States alone have jurisdiction.

There are a number of ways in which the adequacy of the weekly benefit can be measured. But before we do the measuring, we must remember that unemployment compensation is intended to replace only a part of the wages lost by a worker who is out of work because of lack of work opportunities. The amount of the weekly benefit must, therefore, be determined by a formula which establishes, for all beneficiaries, a uniform relationship between benefits and prior earnings. While the size of the weekly benefit for each beneficiary is determined by the amount of his prior earnings and, therefore, varies from one person to the next, the proportion of wage loss to be compensated is, normally, the same for all.

What the actual proportion of wage loss to be compensated should be is, to a considerable degree, a matter of public policy. On the one hand, the proportion should not be so small as to depress living standards unduly, or to require many beneficiaries to resort to relief to supplement benefits. On the other hand, the proportion should not be so large as to threaten the beneficiary's incentive to look for a job. The legislative battles over the size of the weekly benefit which take place every two years throughout the country involve variations of these two points of view.

Back in 1934, the Committee on Economic Security created by President Roosevelt, whose report ultimately led to the enactment of the Federal Social Security Act and the State unemployment compensation laws, assumed a weekly unemployment compensation benefit which would equal 50 per cent of prior weekly wages. While the basis for this assumption is not entirely clear, it appears to have been an attempt to approximate that proportion of workers' earnings which is normally used for nondeferrable living



expenses. These nonpostponable ordinary living expenses are, basically, those for food, rent, and utilities.

In Illinois, and in a large number of other States, a formula was adopted, providing for a weekly benefit equal to 5 per cent, or 1/20 of the wages a worker was paid in a specified prior calendar quarter. Since there are 13 weeks in a calendar quarter, the proportion of prior weekly wages compensated could be as high as 65 per cent. However, workers do not, under ordinary circumstances, work full time throughout each of the 13 weeks of a calendar quarter. Illness, short layoffs, and other factors tend to reduce the number of days worked. If time lost during a quarter equals one week, the proportion of prior weekly wages compensated goes down, under the formula, to 60 per cent; if time lost is two weeks, the proportion is reduced to 55 per cent; if lost time adds up to three weeks, the proportion is down to 50 per cent.

A few moments ago, I observed that the benefit formula normally establishes, for all beneficiaries, a uniform relationship between benefits and prior earnings. I said that the proportion of wage loss to be compensated is normally the same for all. I used the word "normally" because there have been departures from this principle, and such a departure occurred in Illinois when The Unemployment Compensation Act was amended in 1955. Under the amended formula, beneficiaries whose weekly benefit is \$27 or less get the same proportion of prior wages as before--5 per cent of the wages they were paid in a specified prior calendar quarter. But those who qualify for a weekly benefit higher than \$27 find that the proportion of their prior wages which is compensated tapers off from the 5 per cent figure; the higher their prior wages, the smaller the proportion compensated. The amended formula provides, in effect, for a weekly benefit equal to



5 per cent of the first \$540 of the wages paid the worker in the specified calendar quarter, plus 3.03 per cent of the remaining wages paid him in that quarter.

Whatever the benefit formula may be, no State permits it to operate without limits. The most important of these limits is the ceiling on the weekly benefit prescribed by our law. No one may receive a weekly benefit in excess of the statutory ceiling, regardless of the size of his prior weekly wage.

The imposition of a statutory ceiling on the weekly benefit is based on the theory that a worker who earns \$300 a week shouldn't get \$150 a week in benefits. But the ceiling also creates the danger that, in a period of rising price and wage levels, it will remain stationary, or, at best, it will move upward too slowly. As a result, with the passage of time and the increase in wage levels, the benefit formula operates less and less effectively. More and more workers bump against the statutory ceiling, and their weekly benefit is smaller than the proportion of wage loss which the benefit formula says they ought to get. To put it another way, fewer and fewer workers receive a weekly benefit which constitutes a sufficiently high proportion of their prior wages to enable them to buy nonpostponable necessities during periods of temporary unemployment.

Although all the States acted from time to time to raise their ceilings, the ceilings have not been rising nearly as fast as have prices and wages. This lag led President Eisenhower to urge the States to raise their ceilings to a sufficiently high level to permit the great majority of the beneficiaries to qualify for a weekly benefit equal to at least half of their prior earnings. While many States responded to his plea by raising their ceilings, most of them have still a long way to go to reach the standard suggested by him.



In my opinion, the recent development in collective bargaining for private supplemental unemployment benefits is directly related to the reluctance of the States to raise the ceilings on the weekly benefit to adequate levels. Employer representatives of companies with private supplemental plans have publicly stated that private supplementation of State unemployment compensation benefits would not have flourished so in the last two years, if the States had recognized the need to restore the level of adequacy which the unemployment compensation weekly benefit had in 1939.

As an illustration of what has happened to the unemployment compensation weekly benefit, let us examine the statutory ceiling on the weekly benefit in Illinois. Even before July, 1939, when benefit payments began in Illinois, the Legislature had already increased the original statutory \$15 maximum to \$16. Effective April 1, 1942, the statutory maximum was again raised to \$18 and, effective April 1, 1944, to \$20; April 1, 1950, the ceiling went to \$25; two years later (April 1, 1952), it reached \$27.

The last change went into effect April 1, 1956, and involved something new. Instead of one statutory ceiling, several were adopted, based on whether the beneficiary had a dependent spouse or child, and on the number of his dependent children. To reach any of the prescribed ceilings, the beneficiary must still have been paid sufficient wages, under the benefit formula, in the specified prior calendar quarter.

Under the new system, the maximum possible weekly benefit for a person without dependents is \$28; for a person who has a dependent, a non-working spouse or a dependent child, it is \$31; for one with two dependent children it is \$34; for one with three dependent children, it is \$37; and for a person with four or more dependent children, it is \$40.



Now, \$40 sounds like a ceiling on the weekly benefit which is pretty nearly adequate. However, only persons who have four dependent children can qualify for it if they have sufficient prior wages. (\$952.51 or over in high quarter--\$73 a week if he worked full time during the quarter.) Figures for the six months between April and September, 1956, tell an interesting story in this connection. Three out of five of our beneficiaries during that period had no dependent spouse or child. The ceiling on the weekly benefit for them was \$28, no matter how high their prior wages were. A little over one out of five of our beneficiaries had either a dependent, a nonworking spouse or a dependent child; their weekly benefit could not exceed \$31. Not quite one beneficiary out of ten had two dependent children, and could qualify for as high as \$34 weekly benefit. Less than 5 per cent, or less than one in twenty of the beneficiaries had three dependent children; the possible top for them was \$37. Only 4 1/2 per cent, or about one in 25 of the beneficiaries could qualify for the very top ceiling of \$40, because they did have four dependent children.

An even more significant fact can be derived from those figures. Of all the beneficiaries for whom the maximum possible weekly benefit was \$28, more than three-fourths had a weekly benefit of \$28. Of those for whom the ceiling was \$31, 82 per cent were concentrated at the ceiling. Of those for whom it was \$34, 79 per cent had a weekly benefit at the ceiling. Of those for whom it was \$37, 73 per cent were at the ceiling; and of those for whom the maximum possible weekly benefit was \$40, 63 per cent were at that figure.

When the weekly benefit of more than three-quarters of the beneficiaries is at the statutory maximum, it is a pretty good indication that their prior wages were sufficiently high to have qualified them for a higher weekly benefit under the benefit formula, if its operation had



not been limited by the statutory maximum. It must also be concluded that their weekly benefits constituted an inadequate replacement of the wages they lost as a result of their unemployment.

Another way of measuring the adequacy of the maximum weekly benefit is to compare its purchasing power with that of the maximum weekly benefit which prevailed when benefit payments first began. Here the figures are dramatic indeed. In terms of 1939 dollars the maximum weekly benefit in 1940 (when the statutory ceiling was \$16) was \$15.79. In 1956, the \$28 maximum weekly benefit of three out of five of our beneficiaries was, in terms of 1939 dollars, equal to only \$13.71. In other words, the purchasing power of the 1956 maximum weekly benefit for the majority of our beneficiaries was, in terms of 1939 dollars, \$2.08 lower than it was in 1940.

I have said that the \$16 statutory ceiling on the weekly benefit in 1940 equalled \$15.79 in terms of 1939 dollars. Average weekly wages in 1939 of Illinois workers covered by The Unemployment Compensation Act were \$29.27. You will note that, in 1940, the maximum weekly benefit constituted more than one-half of prior average weekly wages.

The \$28 statutory ceiling on the weekly benefit in 1956, for beneficiaries without dependents, equaled \$13.71 in terms of 1939 dollars. Average weekly wages in 1955 of Illinois workers covered by the Act were \$86.65; in terms of 1939 dollars, they were \$43.17. Thus, in 1946, the \$28 maximum weekly benefit constituted only a little over 30 per cent of prior average weekly wages.

There is still another method of measuring the adequacy of the maximum weekly benefit, and that is actually to estimate the current cost of nonpostponable necessities and to compare it with the maximum weekly benefit.



Computations in Illinois growing out of a study undertaken by the Federal Bureau of Labor Statistics some years ago indicate that, in Chicago, in March 1954, the total weekly budget for a family consisting of an employed father, a housewife, and two children under 15 was \$73.98. It should be recognized that this figure is now unrealistically low because of the significant rent increases since 1954. The cost of food, rent, and utilities in that month for that family was \$43.69, or 59 per cent of the total weekly budget.

Now, the maximum weekly benefit in Illinois for a person with two dependent children is \$34. This is less than 78 per cent of the cost of nonpostponable necessities in March 1954.

I have spent some time analyzing the Illinois maximum weekly benefit in order to show you what has happened to the unemployment compensation weekly benefit over the years. Illinois' experience is not unique. The trend which I have described for Illinois has existed under the unemployment compensation laws of all the States. However, the maximum weekly benefit is, at this time, higher in 35 States than the \$28 first ceiling in Illinois.

#### Disqualifications

The third major basis for judging the effectiveness of an unemployment compensation program is the degree of stringency of its eligibility requirements and disqualification provisions.

Every insurance policy which you buy contains a description of the rules and conditions which must be met before the insurance company will pay the specified benefits. Most of these rules and conditions are safeguards to limit the payment of benefits solely to those individuals who have experienced the event against which they are insured. That is



what the eligibility requirements and disqualification provisions in unemployment compensation are designed to do. Unemployment compensation is insurance for persons in the labor market against the risk of only one type of unemployment--that caused by the lack of work opportunities. An individual whose unemployment is due to any other reason (for example, illness) is not experiencing the event against which unemployment compensation provides its protection. Unemployment compensation eligibility requirements and disqualification provisions are, in effect, tests on the basis of which the cause of the individual's unemployment can be determined. Benefits can be paid to an individual only if the tests show that the cause of his unemployment is the lack of work opportunities.

The basic tests, or eligibility requirements, are the same in every unemployment compensation law. All these laws require proof of prior work as an indication of attachment to the labor market. All of them require that the worker, during each week for which he claims benefits, has been able to work and available for suitable work. All of them also require that he be registered for work with the State employment service. Most of them, including Illinois, require that during the period for which benefits are claimed the worker has actively sought work.

The basic reasons for disqualification provisions are also the same in every unemployment compensation law. If an individual has unreasonably caused his own unemployment, then it is not immediately due to the lack of work opportunities. Therefore, every State disqualifies a person who has left a job voluntarily without good cause, who has been discharged for misconduct connected with the work, or who has failed, without good cause, to accept suitable work offered to him.

While these basic eligibility requirements and disqualifications are common to every unemployment compensation law, the circumstances in which



they are applied, as well as the form the disqualifications take, differ from State to State. Their application and form have also changed within each State with the passage of time.

Now, in Illinois, proof of prior work takes the form of a requirement that, to qualify for benefits, the worker must have been paid, during a recent period of four consecutive calendar quarters, at least \$550 for insured work, and at least \$150 of all the wages paid the worker during the four consecutive calendar quarter period must have been paid him outside the quarter in which his wages were highest.

Many States, including Illinois, have, over the years, added provisions specifying that certain types of persons are to be held unavailable for work and, therefore, ineligible for benefits. These special types of persons may be those who quit jobs because of family responsibilities, pregnant women, students, and so on. Thus, in Illinois, under one of these provisions, a person who removes himself to and remains in a locality with lesser work opportunities is unavailable for work; under another, a woman is considered unavailable for work during the last three months of pregnancy and the first month after childbirth; a third provision declares unavailable a person who quit a job to marry, unless he or she becomes the sole support of the family; a fourth declares unavailable a person who quit a job because of domestic circumstances, until such circumstances cease to exist; and a fifth declares a person unavailable, until certain specified events happen, if he quit a job to accompany or join a member of his family in another locality.

Under the original unemployment compensation laws, disqualifications for voluntary leaving without good cause, discharge for misconduct connected with the work, or refusal of suitable work without good cause generally took the form of a limited postponement of benefits. The



theory was that, during the disqualification period, the worker's unemployment was not due to the lack of work opportunities but was due, rather, to the disqualifying act or event. If, at the end of the disqualification period, the worker was still unemployed despite his efforts to find work, the direct cause of his unemployment was no longer the disqualifying act or event; rather, his unemployment was directly due to the lack of work opportunities.

Thus, in Illinois, until 1941, the disqualification period was from one to six weeks, its actual duration within these limits being dependent on the circumstances of each case. If, at the end of the period, the individual was still unemployed and was able to work and available for work, benefits were allowed him. In 1941, the Illinois disqualification period was lengthened to a minimum of four and a maximum of eight weeks. In 1949, it was made a uniform seven weeks.

Meanwhile, in the early years, a trend had developed in other States toward the imposition of more stringent penalties for voluntary leaving without good cause, discharge for misconduct connected with the work, and refusal of suitable work without good cause. An increasing number of States, in addition to postponing benefits, cancelled all or part of the wage credits upon which benefits are based. Other States postponed benefit payment for the duration of the unemployment following the disqualifying act or event, or until the worker secured new work and earned a specified amount of wages.

In Illinois, there is no provision for reduction or cancellation of benefits, except in one instance; the benefit rights of a worker are, under certain circumstances, cancelled if he has been discharged for committing a felony, larceny, or embezzlement connected with the work.



However, the uniform seven-week disqualification period in Illinois was replaced in 1955 by somewhat more stringent provisions.

You will recall that one of the basic eligibility requirements which a worker must meet to qualify for benefits is that he must have been paid a specified minimum amount of wages for insured work during a recent period of four consecutive calendar quarters. The new Illinois provisions with respect to voluntary leaving without good cause and discharge for misconduct connected with the work distinguish between the person who was paid wages in fewer than three of the four calendar quarters, and the person who was paid wages in three or all four of the quarters.

The person who was paid wages in fewer than three quarters is ineligible for benefits, following his voluntary leaving without good cause or discharge for misconduct connected with the work, for the duration of his ensuing unemployment and until he has earnings equal to at least six times the amount of his weekly benefit. The individual who was paid wages in three or all four of the quarters, and any person, regardless of the distribution of his prior wages, who has refused suitable work without good cause, is ineligible for benefits either until six weeks have elapsed from the date of his initial claim, or until he finds a new job, if that occurs sooner. During each week in this six-week period or until he finds a new job, he must have been able to work, available for work, actively seeking work, and registered for work with the Illinois State Employment Service, and he must report to the unemployment compensation office for each such week as well; if he fails to meet any of these requirements with respect to any week in the disqualification period (for example, if he is ill in one of the weeks), the disqualification period is extended for an additional week.



There has also been a trend, throughout the country, toward more stringent disqualifications on a worker who had left his work voluntarily. Under all but a few of the earlier laws, workers who had good personal reasons for quitting a job were not disqualified for the leaving. This is still true in Illinois, where there is no disqualification for voluntary leaving with good personal cause. However, by the end of 1955, there was a provision in 22 other States under which a worker who leaves work voluntarily is disqualified unless the reason for leaving is attributable to the employer or is connected with the work. In other words, only if the voluntary leaving is caused by the employer or by the conditions of the work can the worker get benefits; in most of these 22 States, even the most compelling personal reasons for voluntary leaving will not excuse him.

#### Ineligibility in Cases of Labor Disputes

Because of the composition of this group, I thought that the labor dispute ineligibility provisions of the Unemployment Compensation laws might be worthy of more lengthy treatment, and most of the rest of my discussion will be devoted to it.

Where a claimant's unemployment arises from a labor dispute, his benefit rights are determined by the provisions of Section 604 of the Act. Section 604 is divided into two parts. The first part is all inclusive in this language:

An individual shall be ineligible for benefits for any week with respect to which his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed,...

The Supreme Court of Illinois, since the adoption of The Unemployment Compensation Act in 1937, has had occasion to render numerous decisions dealing with the meaning of this language.



In all of its decisions, the Court has consistently held that the term "labor dispute" means "any controversy concerning wages, hours, conditions of work or terms of employment."

Some difference of opinion has developed over the meaning of the phrase "stoppage of work." Under a similar provision of the British Unemployment Insurance law this was construed to mean a stoppage of the work generally carried on in an employing establishment. In order to have a stoppage of work, consequently, it is necessary to show that the employer had work on hand in his establishment, the performance of which was stopped, curtailed, or interrupted by reason of the labor dispute. Ordinarily, it has to appear that job vacancies were created by the dispute. If the employer continues to get his customary work done, despite the labor dispute, and if no vacancies can be shown to exist, then there is no stoppage of work and the ineligibility clause cannot apply to any claimants who may have lost their employment because of a labor dispute at such premises. So, one can have the strike, and not necessarily have a stoppage of work. Such was the holding of the Supreme Court of Illinois in Abbott Publishing Co. v. Annunzio, (1953) 414 Ill. 559, where all of the typographical workers of the Chicago Defender were replaced during a labor dispute.

Similarly, the general ineligibility clause will not apply to claimants whose unemployment was due to some other cause, such as a layoff prior to the commencement of the stoppage for reasons not related to the labor dispute--as, for instance, a reduction in force due to lack of work. However, if the claimant who was laid off before the stoppage would have been reemployed but for the stoppage, he becomes subject to the ineligibility from the time he would have been reemployed.

The second part of the section provides in substance that, even though a claimant falls within the broad provisions of the general



ineligibility clause, he may establish that the general ineligibility does not apply to him by meeting the two conditions (A) and (B) of Section 604, stated in the following language:

...provided, that this section shall not apply if it is shown that (A) he (the claimant) is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and (B) he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;...

Due to limitations of time, I shall confine myself to a discussion of the principal issue which is currently being raised with respect to the application of these conditions. With respect to condition (A) the commonest situation arises in employing establishments which employ workers who are in different bargaining units. The dispute arises between the employer and one of the Unions representing only the employees in one bargaining unit. When no agreement is reached and the Union calls a strike and posts pickets at the employer's entrances, members of the other bargaining units often become unemployed, even though they are not involved in the dispute itself--that is, that the outcome of the dispute will have no direct bearing on their wages or working conditions. The issue frequently raised under various factual conditions is whether the claimants thrown out of work by a dispute which does not directly affect them, can satisfy the two required conditions to escape the ineligibility clause (i.e., lack of participation and financial interest and not in same grade or class as those who are involved).

The Illinois Supreme Court has rendered decisions in four cases in which this type of issue was raised. These cases are, up to now, the principal guide posts in applying Section 604 to these situations.



Basically, the contention of the Unions is that the expression "participating in, financing or directly interested in" a labor dispute means simply that the claimant must not be directly interested in the dispute. This contention is not consistent with the court interpretations which gave each unit of the expression a definite, yet different, meaning. A claimant was "directly interested" in a labor dispute whenever his wages or working conditions were subject to change, whether favorably or adversely, by the outcome of the dispute. A claimant was financing a dispute if he contributed financially to the furtherance of a labor dispute being carried on by other workers even though the outcome of the dispute did not affect the wages or working conditions of the financial contributor. A claimant was participating in a dispute in which he was not directly interested whenever he assisted other workers in applying economic pressure upon the employer to meet the terms of those carrying on the dispute.

In American Brake Shoe Co. v. Annunzio, the Supreme Court of Illinois ruled that the voluntary refusal or failure of workers belonging to a nondisputing union to cross the picket line of a union carrying on a dispute, constituted participation in the dispute. Up to the time of this decision, we had followed the principle that the mere refusal to cross a picket line did not amount to participation in the dispute in the absence of some further elements showing interest or participation.

In another case decided by the Supreme Court, Outboard, Marine and Mfg. Co. v. Gordon, (1949) 403 Ill. 523, the employer dealt with two bargaining units, which were affiliated. The company and the office union had reached a satisfactory agreement on contract terms, but the company and the shop union had failed to agree, whereupon the shop union called a strike. The company, upon inquiry, decided in advance of the strike that if the shop union posted pickets, the members of the office union would not



cross the picket line. The company thereupon, without consulting the office union, made an agreement with the shop union to exclude any persons from the company's premises who did not secure a pass from the shop union. The court held that the failure of the office workers to enter the premises to work did not amount to participation because the company did not keep its premises open for them to come in. Since the office workers did not have a fair chance of getting to work because of the company's acquiescence to the striking union's demands, it is not possible to say that the office workers voluntarily refrained from crossing the shop union's picket line.

In the recent case of Shell Oil Co. v. Cummins, (1955) 7 Ill. 2d 329, the company dealt jointly with some fourteen labor unions, each representing workers in different bargaining units constituted of different crafts. The company reached an agreement with twelve of the unions, but the other two unions failed to agree and posted pickets. The evidence showed, first, that there was mass picketing and, second, that there were incidents of violent action by the pickets. The Court held that, in view of the inherently dangerous nature of oil refining operations, the failure of the workers in the bargaining units which had reached agreements to cross the picket lines of the disputing unions, was not voluntary and hence did not constitute participation in the dispute. In other words, the Court held that where there was objective evidence of real danger entailed in crossing the picket line, it could not find that the claimants voluntarily joined in the concerted withdrawal of services for the purpose of increasing the economic pressure upon the employer to come to terms with the disputing unions.

The latest case, Cottini v. Cummins, (1956) 8 Ill. 2d 150, holds in substance that the existence of a strike and picketing by members of a disputing union, does not, of itself, change the conditions of employment.



of other employees in other bargaining units. In that case, the claimant lithographers union contended that under ordinary conditions, they could not continue normal work operations in the absence of the processors who were on strike. They argued that their failure to cross the processors' picket line under these circumstances did not constitute participation because the employer had made no special arrangements with them under which they might continue to work. The Court, in effect, said that there was no proof that there was no work available for the lithographers.

The Illinois Supreme Court has consistently held that, so long as a stoppage of work is traceable to a labor dispute, it makes no difference whether the stoppage results from a strike of the employees or a lockout by the employer. The decision in Buchholz v. Cummins, (1955) 6 Ill. 2d 382, specifically upholds this principle. Suffice the foregoing for condition (A).

Condition (B) is a little more complicated. It is borrowed practically verbatim from the language of the British Unemployment Insurance Act. In the vast majority of cases, the conclusions reached with respect to condition (A) will determine whether the claimant is entitled to relief from the ineligibility clause. But under condition (B) it is possible that individual claimants who meet all of the requirements of condition (A) may still fail to escape the ineligibility clause, simply because, under the terms of condition (B), they belong to the same grade or class of workers as some of those who are participating in or financing or directly interested in the dispute.

The Illinois Supreme Court has, in two cases, stated the principle that all members of the same bargaining unit belong to the same grade or class of workers. In instances where there had been no designated bargaining unit, such as businesses not engaged in interstate commerce, the question of "grade or class of workers" must necessarily be determined from other



circumstances, the nature of the dispute, the nature of the work done by the various employees, the nature of the bargaining agent or union. In both, before the Supreme Court cases, the bargaining units included all factory production and maintenance workers in a shoe manufacturing company. In each case the dispute centered around the piece rates of certain limited groups of specialized production operators. When these groups stopped work to enforce their demands, although all of the other workers in the factory continued to work until they were laid off, a bottle neck at the stopped process prevented the continuous operation of the factory. The Supreme Court held that, even though the workers in the other departments were not personally participating in the dispute, they belonged to the same grade or class of workers as the group which was engaged in the dispute because they were within the same bargaining unit. The fact that all of the production and maintenance workers in these cases may have been members of the bargaining unit may lead one to conclude that the terms bargaining unit and bargaining agent are synonymous. They may in some instances be, namely, where there is an absolute union shop. However, where the Union security conditions are not so rigorous, it is quite possible to have employees within a given bargaining unit who are not members of the union or bargaining agent which holds the exclusive bargaining authority for such bargaining unit.

To summarize: the purpose of the labor dispute provision is to maintain the neutrality of the State in labor dispute cases--and to avoid its entry into a consideration of the merits of the controversy. I am inclined to believe that these objectives are presently achieved, in the main. However, it is for you to decide whether these are laudable objectives, or whether you should try to change them.



Conclusion

As you can see, there has been a trend, over the years, toward some extension of the coverage of the unemployment compensation laws, toward weekly benefits somewhat less adequate than they originally were, and toward more stringent eligibility requirements and disqualification provisions. A case can be made out for the proposition that our nationwide unemployment compensation system has not kept pace with the growth of our economy during the last 17 years. So far as Illinois is concerned, the lag of its maximum weekly benefit behind those in some of the other States is somewhat balanced by the fact that it has escaped some of the more stringent provisions for disqualification which are found in the unemployment compensation laws of some other States.

No one, of course, can predict what the evolution of the unemployment compensation system will be in the next 17-year period. I can assure you, however, that there will be changes. Labor and management both have a vital interest in the program and, so long as that interest continues, the provisions of the State laws will not remain static. Six months from now, when the Seventieth General Assembly adjourns in Springfield, there will probably be new provisions in the Illinois Unemployment Compensation Act which will require many changes in the contents of the talk I have just finished.









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